

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSE ANGEL ORTEGA,)

Petitioner,)

vs.)

BRIAN WILLIAMS, *et al.*,)

Respondents.)

3:09-cv-0646-RCJ-VPC
ORDER

Petitioner Jose Angel Ortega has filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, and has paid the filing fee. Petitioner has now filed a motion to reconsider the court's denial of appointment of counsel (docket #12), emphasizing his lack of education and his inability to speak and write the English language adequately to effectively pursue his petition. Petitioner also advises the court that the individual who has been assisting him to this point will be leaving the prison and will no longer be able to help.

While there is no constitutional right to appointed counsel for a federal habeas corpus proceeding, *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993), and the decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469 U.S. 838 (1984), counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is a person of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). In light of petitioner's

1 language and educational barriers and in order to assist the Court in these proceedings, the Federal
2 Public Defender for the District of Nevada (FPD) shall be appointed to represent petitioner. If the FPD
3 is unable to represent petitioner, due to a conflict of interest or other reason, then alternate counsel for
4 petitioner shall be located, and the Court will enter a separate order appointing such alternate counsel.
5 In either case, counsel will represent petitioner in all future federal proceedings relating to this matter
6 (including subsequent actions) and appeals therefrom, unless allowed to withdraw.

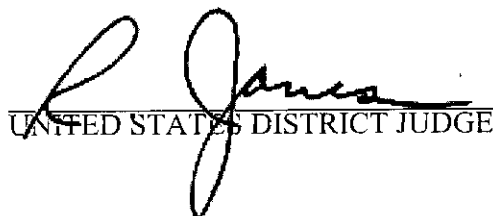
7 **IT IS THEREFORE ORDERED** that petitioner's Motion for Reconsideration of Appointment
8 of Counsel (docket #12) is **GRANTED**. Counsel shall be appointed to represent petitioner.

9 **IT IS FURTHER ORDERED** that the Clerk shall **SEND** the Federal Public Defender for the
10 District of Nevada (FPD) a copy of this Order, together with a copy of the petition for writ of habeas
11 corpus and its attachments (docket #2). The FPD shall have thirty (30) days from the date of entry of
12 this Order to undertake direct representation of petitioner or to indicate to the Court its inability to
13 represent petitioner in these proceedings.

14 **IT IS FURTHER ORDERED** that the Clerk shall **RESUBMIT** this case to the Court after the
15 FPD has appeared as counsel for petitioner, after the FPD has indicated its inability to represent
16 petitioner, or after thirty (30) days from the entry of this Order, whichever occurs first.

17 **IT IS FURTHER ORDERED** that, after counsel has appeared for petitioner in this case, the
18 Court will issue a scheduling order, which will, among other things, set a deadline for the filing of a First
19 Amended Petition.

20 Dated: This 21st day of April, 2010.

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23 UNITED STATES DISTRICT JUDGE
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